

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2217 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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B B GAJERA

Versus

DISTRICT DEVELOPMENT OFFICER  
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Appearance:

MRS KETTY A MEHTA for Petitioner

MR AD MITHANI for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/2000

C.A.V. JUDGEMENT

1. Having heard the learned counsel for the parties,  
I am satisfied that the petitioner in the matter has the  
alternate remedy to challenge the order of the Additional  
Development Commissioner, Annexure-E, dated 31st January,  
1989 before the Gujarat Civil Services Appellate

Tribunal.

2. In the matter, the petitioner has efficacious alternate remedy available and that remedy has to be first availed of by him. In the Special Civil Application, the petitioner has wrongly mentioned that he has no any other alternate efficacious remedy available in law. Though this statement has been made, necessary details are not furnished. On being put by the court, the learned counsel for the petitioner orally stated that as this order has been passed by the Additional Development Commissioner, who is also stated to be holding the post of Secretary of the Department concerned, the appeal is not maintainable before the Gujarat Civil Services Appellate Tribunal.

3. I do not find any merit in this contention. It is not a case where this order has been passed by the State Government. There is nothing on the record to show that the Additional Development Commissioner was the Secretary of the Department concerned. Otherwise also, only on this ground, I fail to see any justification in the approach of the petitioner to directly come before this Court. In a case where the litigant has an alternate efficacious remedy, the Court has to discourage them to directly come to the Court without availing that remedy. In such cases, the Court has to direct the litigant first to avail that remedy. It is understandable where the Tribunal decides that it has no jurisdiction, the petitioner may approach this Court.

4. The learned counsel for the petitioner submitted that now in case, the petitioner is relegated to the remedy of appeal, the Tribunal may dismiss the appeal on the ground of limitation and secondly, the petitioner has to stand in queue as it will be appeal registered as appeal of the year 2000.

5. The learned counsel for the petitioner, on being asked by the court, submitted that limitation to file the appeal before the Tribunal is of 45 days. If we go by the date of the order of the Additional Development Commissioner and the date of the presentation of this Special Civil Application, I find that the petitioner has approached to this Court before 45 days of the date of the passing of the order impugned in this Special Civil Application. The day on which this Special Civil Application has been filed by the petitioner in the Court, limitation was there for filing of the appeal before the Tribunal. In view of this fact, this apprehension of the petitioner is wholly without any

substance. For all this time, this writ petition has remained pending in this Court and naturally, even if technically the petitioners' counsel may be correct, also the Tribunal may have this technical view, but it is a good cause to condone the delay in filing of the appeal. The power vests in the Tribunal, on which there is no dispute between the learned counsels for the parties, to entertain the appeal of the litigant beyond the period of limitation.

6. So far as the second apprehension is concerned, it is well founded. But, the Court will take care of the same and will appropriately direct the Tribunal to decide the appeal expeditiously.

7. In the result, this Special Civil Application is disposed of in terms that the petitioner to file the appeal against the order of the Additional Development Commissioner impugned in this Special Civil Application before the Gujarat Civil Services Appellate Tribunal within a period of 15 days from the date of receipt of certified copy of this order. It is expected of the Tribunal to expeditiously circulate and issue notices to the respondents on filing of this appeal. The appeal shall be decided within a period of 3 months of the date of service of notices on the opponents. It is expected of the Tribunal to not make long date of return of the notices. It is further expected of the Tribunal that it shall decide the appeal on merits, that is to say, not to reject on the ground of limitation. The Special Civil Application and Rule stand disposed of accordingly with no order as to costs.

(S.K. Keshote, J.)  
(kamlesh)